

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 -----X
5 EDWARD CARTER, FRANK FIORILLO, KEVIN LAMM,
6 JOSEPH NOFI, and THOMAS SNYDER,
7 Plaintiffs,
8 -against- Case No. 07-Civ-1215
9 (SJF) (ETB)
10 INCORPORATED VILLAGE OF OCEAN BEACH; MAYOR
11 JOSEPH C. LOEFFLER, JR., individually and in
12 his official capacity; former mayor NATALIE
13 K. ROGERS, individually and in her official
14 capacity; OCEAN BEACH POLICE DEPARTMENT;
15 ACTING DEPUTY POLICE CHIEF GEORGE B. HESSE,
16 individually and in his official capacity;
17 SUFFOLK COUNTY; SUFFOLK COUNTY POLICE
18 DEPARTMENT; SUFFOLK COUNTY DEPARTMENT: OF
19 CIVIL SERVICE; and ALISON SANCHEZ,
20 individually and in her official capacity,
21 Defendants.
22 -----X

23 926 Reckson Plaza
24 Uniondale, New York

25 September 16, 2008
26 9:52 A.M.

27 VIDEOTAPE DEPOSITION of EDWARD
28 CARTER, taken pursuant to the Federal Rules
29 of Civil Procedure, and Notice, held at the
30 above-mentioned time and place before Edward
31 Leto, a Notary Public of the State of New
32 York.

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35

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2 A P P E A R A N C E S:

3 THOMPSON WIGDOR & GILLY LLP
4 Attorneys for Plaintiffs
5 85 Fifth Avenue
6 New York, New York 10003
7 BY: ANDREW S. GOODSTADT, ESQ.

8 RIVKIN RADLER LLP
9 Attorneys for Defendants
10 Incorporated Village of Ocean
11 Beach, Mayor Joseph C. Loeffler,
12 Jr., former Mayor Natalie K.
13 Rogers, and Ocean Beach Police
14 Department
15 926 Reckson Plaza
16 Uniondale, New York 11556
17 BY: KENNETH A. NOVIKOFF, ESQ.
18 - and -
19 MICHAEL WELCH, ESQ.

20 MARK, O'NEILL, O'BRIEN & COURTNEY, P.C.
21 Attorneys for Defendant Acting
22 Deputy Police Chief George B.
23 Hess
24 530 Saw Mill River Road
25 Elmsford, New York 10523
BY: KEVIN W. CONNOLLY, ESQ.

26 SUFFOLK COUNTY ATTORNEY'S OFFICE
27 Attorneys for Defendants Suffolk
28 County, Suffolk County Police
29 Department, Suffolk County
30 Department of Civil Service, and
31 Alison Sanchez
32 100 Veterans Memorial Highway
33 Hauppauge, New York 11788
34 BY: ARLENE ZWILLING, ESQ.

35 ALSO PRESENT
36 Albert Santana, Legal Video Specialist

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2 IT IS HEREBY STIPULATED AND
3 AGREED by and among counsel for the
4 respective parties hereto, that the filing,
5 sealing and certification of the within
6 deposition shall be and the same are hereby
7 waived;

8 IT IS FURTHER STIPULATED AND
9 AGREED that all objections, except to the
10 form of the question, shall be reserved to
11 the time of the trial;

12 IT IS FURTHER STIPULATED AND
13 AGREED that the within deposition may be
14 signed before any Notary Public with the
15 same force and effect as if signed and sworn
16 to by the Court.

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E. Carter

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THE VIDEOGRAPHER: This is tape
3 number one of the videotape deposition
4 of Edward Carter in the matter of
5 Edward Carter, et al., Plaintiffs,
6 versus Incorporated Village of Ocean
7 Beach, et al., Defendants, in the
8 United States District Court, Eastern
9 District of New York, case number
10 07-civ-1215(SJF)(ETB), on September 16,
11 2008 at approximately 9:52 a.m.

12

My name is Albert Santana from
13 the firm of Precise Court Reporting and
14 I'm the legal video specialist. The
15 court reporter is Ed Leto in
16 association with Precise Court
17 Reporting. For the record, will
18 counsel please introduce themselves.

19

MR. GOODSTADT: Andrew
20 Goodstadt, Thompson Wigdor & Gilly, on
21 behalf of the Plaintiffs.

22

MR. NOVIKOFF: Ken Novikoff and
23 Michael Welch, Rivkin Radler, on behalf
24 of all Village Defendants and the
25 individual Defendants, Loeffler and

1 E. Carter

2 Rogers.

3 MS. ZWILLING: Arlene Zwilling
4 for Christine Malafi, Suffolk County
5 Attorney, representing the Suffolk
6 County Defendants.

7 MR. NOVIKOFF: And just for the
8 record, counsel for Mr. Hesse is not
9 here yet. He's indicated that he is
10 going to be delayed. We noticed this
11 up for 9:30, so we're going to proceed
12 with the deposition now, which is
13 approximately five to 10:00, right.

14 THE VIDEOGRAPHER: Now will the
15 court reporter please swear the
16 witness.

17 E D W A R D C A R T E R, having first
18 been duly sworn by a Notary Public of the
19 State of New York, was examined and
20 testified as follows:

21 THE COURT REPORTER: Please
22 state your name for the record.

23 THE WITNESS: Edward Carter.

24 THE COURT REPORTER: Please
25 state your address.

1 E. Carter

2 THE WITNESS: 55 Kansas

3 Avenue, Bay Shore, New York 11706.

4 MR. NOVIKOFF: Mr. Goodstadt,
5 regular stipulations?

6 MR. GOODSTADT: Yes. Federal
7 rules govern, local rules govern. He's
8 just going to reserve his right to
9 review and sign.

10 MR. NOVIKOFF: Just like the
11 last deposition.

12 MR. GOODSTADT: Yes.

13 EXAMINATION BY

14 MR. NOVIKOFF:

15 MR. NOVIKOFF: Good morning,
16 sir. I am Ken Novikoff and I'm going
17 to be asking you a series of questions
18 today, and if you don't understand my
19 questions, then I would invite you to
20 tell me and I will try to rephrase them
21 in such a way that you better
22 understand them.

23 You are free to talk to your
24 counsel at any time as many times as
25 you'd like. The only thing I would

1 E. Carter

2 request is that while a question is
3 pending, you answer the question before
4 you speak with your counsel.

5 Obviously, if your counsel instructs
6 you not to answer a question, then you
7 do what you need to do.

8 Q. Have you spoken with Mr. Nofi --
9 well, withdrawn. Are you aware that
10 Mr. Nofi has been deposed in this case?

11 A. Yes.

12 Q. Did you speak with Mr. Nofi after
13 his deposition?

14 A. No.

15 Q. Did you speak with Mr. Nofi
16 before his deposition specifically
17 concerning his deposition?

18 A. No.

19 Q. Have you spoken to the -- to any
20 of the other Plaintiffs in this case
21 subsequent to Mr. Nofi's deposition?

22 A. With my attorney, yes.

23 MR. NOVIKOFF: Yes. Again,
24 let's also -- if I ask you questions
25 concerning communications you may have

1 E. Carter

2 had with the other Plaintiffs that were
3 in the presence of your counsel, then
4 just advise me of that and I'm sure
5 your counsel will tell you not to
6 answer. Likewise, if any of my
7 questions seek information concerning
8 what you and your counsel said, I'm
9 sure your counsel will object.

10 Q. Outside the presence of your
11 counsel, have you spoken with any of the
12 Plaintiffs subsequent to the Nofi
13 deposition?

14 A. When we first filed the lawsuit,
15 yes.

16 Q. Let me rephrase. Nofi was
17 deposed last week.

18 A. Yes.

19 Q. You're aware of that. After,
20 between that date of his deposition and
21 today, have you spoken with any of the other
22 Plaintiffs?

23 A. Yes.

24 Q. Whom -- with whom have you
25 spoken?

1 E. Carter

2 A. With Kevin Lamm.

3 Q. And when did you speak with Kevin
4 Lamm?

5 A. Prior to -- it would be Sunday.

6 (Mr. Connolly entered the room.)

7 Q. And was that in the presence of
8 your attorney?

9 A. No.

10 Q. Was it by phone?

11 A. Yes.

12 Q. What was the sum and substance of
13 the conversation?

14 A. I told him I was going for a
15 deposition on Tuesday and that we were
16 notified that several depositions were
17 canceled next week and the following weeks,
18 which we had taken days off for.

19 Q. Okay. Well, what deposition --
20 what days off did you take?

21 A. I was going to take off -- well,
22 I didn't -- I took off for tomorrow which is
23 Wednesday, and I was going to put in for a
24 couple days next week.

25 Q. Why did you decide to take off

1 E. Carter

2 for tomorrow?

3 A. There was a deposition scheduled
4 for tomorrow.

5 Q. Of whom?

6 A. With Mr. Paridiso.

7 Q. And why did you think it was
8 important for you to be at Mr. Paridiso's
9 deposition?

10 A. With my case being as important
11 as it is to me, I think it's important for
12 me to make as many depositions as I can.

13 Q. Fair enough. And what did
14 Mr. Lamm say to you, if anything, on Sunday
15 after you told him you were going to be
16 deposed and that some of the depositions had
17 been canceled?

18 A. He asked me if I knew where the
19 place was, which I was a little unsure of,
20 and I told him that -- I asked him if he was
21 going to go on Wednesday, and he said he
22 wasn't sure if he could get off from work or
23 not.

24 Q. Was that the extent of your
25 conversation with Mr. Lamm?

1 E. Carter

2 A. Basically, yes. From what I
3 recall at this time, yes.

4 Q. Did you talk about any of the
5 substantive allegations in the complaint
6 with Mr. Lamm on Sunday?

7 A. No.

8 Q. Prior to Mr. Nofi's deposition
9 last week, did you speak with any of the
10 other Plaintiffs concerning Nofi's
11 deposition?

12 A. Just the other told -- we were
13 told we were going for depositions. Just
14 the dates.

15 Q. Okay. You didn't speak with the
16 other Plaintiffs concerning --

17 MR. GOODSTADT: Just -- just so
18 when you say you were told that you
19 were going for dates, don't disclose
20 any communications that came from us.
21 He's talking about only between you and
22 the other Plaintiffs.

23 Q. Other than -- putting aside what
24 you may or may not have spoken to counsel
25 about concerning your deposition, have you

1 E. Carter

2 spoken to anybody else concerning the fact
3 that you were being deposed today?

4 A. No.

5 Q. With whom are you presently
6 employed, if anybody?

7 A. Township of Islip.

8 Q. And what job do you presently
9 hold with the Township of Islip?

10 A. Civil service job as a park
11 ranger two, which is a sergeant's position.

12 Q. Are you presently employed by any
13 other entity or individual?

14 A. No.

15 Q. In year 2008, have you sought any
16 employment from any entity or individual?

17 A. No.

18 Q. In 2007, did you seek employment
19 with any entity or individual?

20 A. No. I couldn't for my reason for
21 termination.

22 MO MR. NOVIKOFF: Motion to strike
23 as nonresponsive.

24 Q. My question was a yes or no.

25 A. No.

1 E. Carter

2 Q. So let me rephrase the question.

3 MR. GOODSTADT: Just so I don't
4 have to address your motion to strike
5 each time, we --

6 MR. NOVIKOFF: I would --

7 MR. GOODSTADT: -- oppose any
8 motion to strike.

9 MR. NOVIKOFF: I would
10 stipulate that any time I make a motion
11 to strike, you are going to oppose it
12 and we'll take that up with the court
13 at the appropriate time.

14 MR. GOODSTADT: Great.

15 MR. NOVIKOFF: Okay.

16 Q. Sir, in 2007, did you seek any
17 employment with any entity or individual?

18 A. No.

19 Q. Sir, in 2006, did you seek
20 employment with any entity or individual?

21 A. Yes. I tried to seek employment
22 with the Suffolk County Park Police.
23 Seasonally.

24 Q. When in 2006 did you seek
25 employment with the Suffolk County Park

1 E. Carter

2 Police?

3 A. The phone call was made May,
4 early May of 2006 to the Smith Haven
5 barracks in I believe it's Mastic or
6 Shirley.

7 Q. I'm sorry, what was the end?

8 A. Mastic or Shirley. The location
9 of it.

10 Q. Okay. Other than the Suffolk
11 County Park Police, did you seek any other
12 employment in 2006?

13 A. Yes. My park ranger three
14 position with the Town of Islip, which is a
15 civil service test, promotional test. I
16 applied for it January of 2006. Took the
17 test. The test results came out September
18 2006.

19 Q. So the test results came out
20 after you were advised that you were no
21 longer working for Ocean Beach?

22 A. Yes.

23 Q. Okay. And that would have been
24 instead of seeking new employment, you were
25 seeking a promotion; is that fair?

1 E. Carter

2 A. Furthering my career with more
3 money. Yes.

4 Q. It would be a promotion as
5 opposed to a new job for a new employer?

6 A. It is a new job with the same
7 employer, yes.

8 Q. Okay. So other than the test
9 that you took for this new job with the same
10 employer and other than the Suffolk County
11 Park Police application, did you try to find
12 a job with any other entity or employer in
13 2006?

14 A. I researched stuff and I saw
15 there were several polygraphs that I
16 couldn't apply for them, so no.

17 Q. When you say there were
18 "several" -- I'm not asking why you couldn't
19 apply for them, I'm only now asking you
20 about your comment about there were several
21 polygraphs. So my question is, what did you
22 mean by your answer that "there were several
23 polygraphs"?

24 A. I went on websites for armed
25 security guard, armed carriers and I saw the

1 E. Carter

2 requirements, and it came up with a
3 polygraph. I looked into doing stock at
4 Toys R Us, I had to take a polygraph.

5 Q. Now why was taking a polygraph a
6 problem?

7 A. The problem was when George Hesse
8 fired me, terminated me from Ocean Beach, he
9 originally told me I was let go for
10 directives that he posted in the fall.

11 Q. Okay.

12 A. He further went on later on at a
13 meeting on April 2, when I was let go, that
14 I was going to wear a wire for the District
15 Attorney's office in reference to a Gilbert
16 incident, a businessman that was beat up
17 while at Ocean Beach.

18 Q. Okay.

19 A. Subsequent phone call to Hesse
20 later on winds up being he tells me -- there
21 was a blog, the Long Island Politics, that I
22 did official misconduct, falsified paperwork
23 for a Halloween incident. Arnold Hardman
24 calls me, reconfirms saying, "Carter" --
25 right after I was let go -- "you got scooped

1 E. Carter
2 up. I think you got scooped up in the
3 Halloween incident," which I wasn't working
4 then. So there were three reasons at that
5 point why he let me go. The fourth reason
6 he gave me is I was sleeping. There was no
7 way I could answer a polygraph why I was let
8 go.

9 Q. But, sir, a polygraph -- to your
10 knowledge, isn't it true that a polygraph is
11 a device wherein it is asking you questions
12 to see if your responses were less than
13 truthful?

14 MR. GOODSTADT: objection.

15 A. Yes.

16 Q. You have that understanding as to
17 what a polygraph is, correct?

18 A. Yes. Also, the question why were
19 you terminated or fired from Ocean Beach I
20 couldn't answer.

21 Q. Well, that doesn't mean that you
22 would be lying, would it?

23 MR. GOODSTADT: Objection.

24 Q. Were you lying in response to
25 when -- the last answer that you gave with

1 E. Carter

2 regard to the four reasons that you say that
3 Mr. Hesse says that he gave you for being
4 fired, were you lying?

5 A. No.

6 Q. Okay. So if someone asked you on
7 a polygraph question exam "why were you
8 fired" and you answered "I don't know,"
9 would that be a truthful response?

10 MR. GOODSTADT: Objection.

11 Q. As you sit here today? You can
12 answer.

13 A. I'm sorry.

14 MR. GOODSTADT: You can answer.

15 Q. You can answer the question.

16 A. It would be truthful.

17 Q. And if someone asked you during a
18 polygraph exam what were the reasons that
19 Mr. Hesse gave you for being fired as you
20 say you were on April 2, you would have
21 given the same answers you just gave me,
22 correct?

23 MR. GOODSTADT: Objection.

24 A. No. They have yes and no
25 questions and they would -- just the

1 E. Carter

2 hearing, again, why I was let go, my blood
3 pressure would be raised, which would give
4 off on the polygraph, and I would -- I would
5 definitely not pass a polygraph, and Hesse
6 was aware of that and I made him aware of
7 that.

8 Q. When did you make Mr. Hesse aware
9 that your blood pressure would be raised
10 during a polygraph exam?

11 A. I made him aware -- I didn't make
12 him aware of that.

13 Q. Okay. When did you make
14 Mr. Hesse aware that you would fail a
15 polygraph test because of the events that
16 took place on April 2, 2006?

17 MR. GOODSTADT: Objection.

18 A. I called -- I called him May.

19 Q. Just answer me when.

20 A. In May.

21 Q. Okay. How?

22 A. By phone.

23 Q. And what did you say to Mr. Hesse
24 concerning your concerns that you would
25 be -- you would fail a polygraph test?

1 E. Carter

2 A. I told him I would have to take a
3 polygraph for the Suffolk County Park Police
4 and a background, and I needed to know why I
5 was let go.

6 Q. Okay. Sir, in that conversation,
7 did you tell Mr. Hesse that you would fail a
8 polygraph test because of the events
9 concerning April 2, 2006?

10 MR. GOODSTADT: Objection.

11 Q. Yes or no?

12 A. I'm sure I expressed it in the
13 way I asked him, yes.

14 Q. I don't understand what that
15 means, sir. What do you mean you expressed
16 it in a way you asked him? My question is
17 simple, did you advise Mr. Hesse
18 specifically "I will fail a polygraph test
19 because of the events surrounding April 2,
20 2006"?

21 MR. GOODSTADT: Objection.

22 A. No.

23 Q. Now since you brought it up, I'm
24 going to ask you this. What reasons did
25 George Hesse give you at any point in time

1 E. Carter

2 for why you were no longer going to be
3 working for Ocean Beach? I don't want to
4 know the circumstances surrounding the
5 conversation, I just want to know the
6 specific reasons that George Hesse
7 communicated to you directly.

8 A. The original one at April 2 was
9 he had to let someone go for the directives
10 he hung up in the fall and he chose me.

11 Q. Okay. Next one?

12 A. Later on, during a phone call and
13 an email, May of 2006, he told me for
14 sleeping.

15 Q. Okay. So he communicated to you
16 two reasons why he let you go. One was for
17 what you labeled directives, and two is
18 because you were sleeping?

19 A. Yes.

20 Q. Any other reasons that he
21 communicated directly to you concerning why
22 he made the decision not to rehire you for
23 the 2006 summer season?

24 MR. GOODSTADT: Objection.

25 MR. NOVIKOFF: Well, I'll

1 E. Carter

2 withdraw the question.

3 Q. Other than the two reasons you
4 just gave me, are there any other reasons
5 that Mr. Hesse communicated to you directly
6 with regard to why you were no longer
7 working for Ocean Beach after April 2, 2006?

8 A. No.

9 MR. NOVIKOFF: I'm going to ask
10 the court reporter to mark the
11 following documents as Carter-1.

12 (Notice of Claim was marked as
13 Carter Exhibit-1 for identification;
14 9/16/08, E.L.)

15 Q. Sir, I'm going to show you what's
16 been marked as Carter-1 and ask you to
17 review it, and please advise me when you're
18 done reviewing it.

19 A. (Reviewing). I'm done, sir.

20 Q. And do you recognize this
21 document?

22 A. Yes, sir.

23 Q. And what is this document?

24 A. It's a Notice of Claim.

25 Q. And are you aware what a Notice

1 E. Carter

2 of Claim is?

3 A. I'm a little familiar with it,
4 sir.

5 Q. What's your understanding what a
6 Notice of Claim is?

7 A. My understanding is a Notice of
8 Claim must be filed within a specific period
9 of time after a wrong doing is done for
10 court or legal proceedings to proceed.

11 Q. And let's turn to the third page.
12 It says -- there's a signature, do you see
13 that?

14 A. Yes.

15 Q. And it's "respectfully yours,
16 Thompson Wigdor & Gilly, LLP," do you see
17 that?

18 A. Yes.

19 Q. Was that your lawyer -- well, was
20 that the law firm representing you at the
21 date that the Notice of Claim was filed?

22 A. Yes.

23 Q. And you see the date "June 30,
24 2006"?

25 A. Yes.

1 E. Carter

2 Q. Did you review the Notice of
3 Claim before you -- well, did you authorize
4 your lawyers to file the Notice of Claim on
5 your behalf?

6 A. Yes.

7 Q. And did you review the Notice of
8 Claim prior to it being filed by your
9 lawyers?

10 A. Yes.

11 Q. On how many occasions did you
12 review the Notice of Claim prior to it being
13 filed?

14 A. One time.

15 Q. And did you review the Notice of
16 Claim for purposes of accuracy?

17 A. Yes.

18 Q. And would it be correct to say
19 that if you found that there was anything
20 that was inaccurate in there, you would have
21 notified your lawyers about that?

22 MR. GOODSTADT: Objection.

23 A. Yes.

24 RL Q. And prior to authorizing your
25 lawyers to file the Notice of Claim, did you

1 E. Carter

2 advise them that there was anything
3 inaccurate?

4 DI MR. GOODSTADT: Objection. I'm
5 going to instruct the witness not to
6 respond to the question as it violates
7 attorney/client communication.

8 MR. NOVIKOFF: I don't think it
9 does, but let's mark that for a ruling.

10 MR. GOODSTADT: Okay.

11 Q. When you read this Notice of
12 Claim, was there anything inaccurate that
13 you saw?

14 A. No.

15 Q. And when I say "this Notice of
16 Claim," I'm talking about what's been marked
17 as Carter-1?

18 A. No.

19 Q. Okay. Let's look at the "nature
20 of the claim" section. Four lines from the
21 bottom, five lines from the bottom, in the
22 middle it says "and otherwise," do you see
23 it?

24 A. Yes.

25 Q. And just for the record, there is

1 E. Carter
2 underlining on the Notice of Claim. I don't
3 know who put that there, but you --
4 withdrawn. I didn't put that there, so.
5 "And otherwise wrongful conduct and
6 practices engaged in by numerous senior
7 ranking officers, including but not limited
8 to Sergeant George Hesse," do you see that?

9 A. Yes.

10 Q. Who are the other senior ranking
11 officers that you refer to in this Notice of
12 Claim?

13 A. The officers that had more time
14 than me, which would be Ken Bockelman, Tyree
15 Bacon.

16 Q. Anybody else?

17 A. Those are the examples I recall
18 at this time.

19 Q. So your understanding of senior
20 ranking officers means that they have more
21 experience than you?

22 A. Yes.

23 0. At Ocean Beach?

24 A. Yes.

25 Q. How do you know Ty Bacon has more

1 E. Carter

2 experience than you?

3 A. He started there prior to my
4 starting in 1991.

5 Q. And was he working there
6 continuously, to your knowledge?

7 A. To my knowledge, no.

8 Q. Do you know how many days he
9 worked since 1991?

10 A. No.

11 Q. So how do you know that he worked
12 more days from the commencement of his
13 employment with Ocean Beach than you
14 worked -- than you worked?

15 MR. GOODSTADT: Objection.

16 A. He was --

17 Q. I just want to know --

18 A. He was there more than a year or
19 two prior to me.

20 Q. But he was seasonal, correct?

21 A. Yes.

22 Q. You're seasonal?

23 A. Yes.

24 Q. That means you're not working
25 five days a week, correct?

1 E. Carter

2 MR. GOODSTADT: Objection.

3 MR. NOVIKOFF: Well, withdrawn.

4 Q. What's your understanding of the
5 word "seasonal"?

6 A. Seasonal is from May to
7 September.

8 Q. Right. And you're working
9 shifts, correct?

10 A. Yes.

11 Q. Less than 40 hours a week on
12 average?

13 A. Myself, yes.

14 Q. Yes. How about Ty Bacon?

15 A. He worked quite a few hours more.

16 Q. How do you know?

17 A. Because the schedules.

18 Q. You saw the schedules since 1991
19 of when Ty Bacon worked?

20 A. He was on the same schedule as
21 me, yes.

22 Q. My question is, you've looked --
23 you know as you sit here today how many
24 days -- how many shifts Ty Bacon worked
25 since 1991?

1 E. Carter

2 A. No.

3 MR. GOODSTADT: Objection.

4 That wasn't the question.

5 Q. Sir, would you agree with me that
6 you're just speculating as to whether or not
7 Mr. Bacon worked more hours at Ocean Beach
8 than you in your respective employment
9 histories?

10 MR. GOODSTADT: Objection.

11 A. It's my belief he did.

12 Q. And it's your belief based upon
13 what?

14 A. Based upon the number of times I
15 seen him there.

16 Q. Did he work nights?

17 A. Yes.

18 Q. Did he work the same nights you
19 worked?

20 A. Not always.

21 Q. And if you weren't at Ocean Beach
22 during a particular night, you don't know
23 whether he was working there that night,
24 correct?

25 MR. GOODSTADT: Objection.

1 E. Carter

2 A. Without looking back through the
3 blotter book, no.

4 Q. Who's the other guy?

5 A. Kenneth Bockelman.

6 Q. Okay. And how do you know he was
7 more senior than you in terms of experience
8 at Ocean Beach?

9 A. He worked 40 hours a week, and in
10 the off season, for many more hours than I
11 did.

12 Q. How do you know?

13 A. Because of the schedule.

14 Q. And when did he start working for
15 Ocean Beach?

16 A. I don't recall the exact date.

17 Q. You started working for Ocean
18 Beach in 1991, correct?

19 A. Yes.

20 Q. And then there was a period of
21 time that you stopped, right?

22 A. Yes.

23 Q. Was Mr. Bockelman there in 1991?

24 A. No.

25 Q. Was Mr. Bockelman there on the

1 E. Carter

2 last day of your employment during your
3 first tenure with Ocean Beach?

4 A. No.

5 Q. When did you recommence your
6 employment with Ocean Beach after your first
7 go around?

8 A. 2001.

9 Q. Was Mr. Bockelman there in 2001?

10 A. Yes.

11 Q. Do you know how long prior to
12 2001 Mr. Bockelman first showed up?

13 A. Only from what he said. He
14 graduated the academy couple years earlier.

15 Q. But that doesn't necessarily mean
16 he was working for Ocean Beach, correct?

17 A. He went right to Ocean Beach.

18 Q. Oh, he went right to Ocean Beach.
19 And did he work nights as well?

20 A. Yes.

21 Q. What unlawful conduct did
22 Mr. Bacon engage in, as you refer to in
23 here?

24 A. Drinking on duty.

25 Q. Okay. And what tortious conduct

1 E. Carter

2 did Mr. Bacon engage in as you refer to in
3 here?

4 MR. GOODSTADT: Objection.

5 MR. NOVIKOFF: I'm just asking
6 him.

7 MR. GOODSTADT: Calls for a
8 legal conclusion.

9 MR. NOVIKOFF: Okay. But this
10 is his document, so.

11 Q. What tortious conduct did
12 Mr. Bacon engage in?

13 MR. GOODSTADT: Same objection.

14 Q. You can answer.

15 A. At this time, I don't recall any.

16 Q. What wrongful conduct and
17 practices did Mr. Bacon engage in as you
18 refer to in here?

19 MR. GOODSTADT: Objection.

20 A. The drinking on duty.

21 Q. Okay. Anything else?

22 A. That I'm aware at this time, no.

23 Q. So are you alleging here that you
24 were unlawfully terminated because you did
25 not participate with Mr. Bacon in drinking

1 E. Carter

2 off duty?

3 A. Drinking with Mr. Bacon and the
4 other officers, yes.

5 Q. And Mr. Bacon fired you?

6 A. Mr. Hesse fired me.

7 Q. Okay. So Mr. Bacon didn't have
8 anything to do with you being fired,
9 correct?

10 A. Directly that I know of, no.

11 Q. He had no authority to hire
12 you -- to fire you, to the best of your
13 knowledge, correct?

14 A. Correct.

15 Q. He was the same rank as you?

16 A. Correct.

17 Q. Okay. And Bachman, what unlawful
18 conduct did Bachman participate in as you
19 allege here?

20 A. He also drinking on duty.

21 MR. GOODSTADT: Just so the
22 record is clear, I think it's
23 "Bockelman."

24 MR. NOVIKOFF: "Bockelman,"
25 okay.

1 E. Carter

2 Q. And what about tortious conduct,
3 what tortious conduct did Mr. Bockelman
4 engage in?

5 MR. GOODSTADT: Objection.

6 Q. Okay. You can answer.

7 A. None that I know of at this time.

8 Q. Is there anything in your
9 possession, custody or control that would
10 refresh your recollection?

11 A. No.

12 Q. What wrongful conduct and
13 practices did Bockelman engage in as you
14 refer to here?

15 MR. GOODSTADT: Objection.

16 A. The drinking on duty.

17 Q. Okay. Anything else?

18 A. With myself, no.

19 Q. Right. And my questions, unless
20 I ask you differently, are just as it
21 relates to you. Was Bockelman the same rank
22 as you?

23 A. Yes.

24 Q. He didn't have any authority to
25 fire you, to your knowledge, did he?

1 E. Carter

2 A. Not that I know of, no.

3 Q. Did he -- to your knowledge, did
4 he have anything to do directly with you
5 being fired?

6 A. Not that I know of.

7 Q. Any other officers that you can
8 refer -- that you can advise us of that you
9 consider to be senior ranking officers as
10 you used that term in this Notice of Claim?

11 A. No, sir.

12 Q. Okay. And when did you first
13 find out -- well, when did you first learn
14 that Bacon was drinking off duty?

15 MR. GOODSTADT: Objection.

16 A. Off duty?

17 MR. NOVIKOFF: Well, withdrawn.

18 Q. Drinking on duty as you say was
19 an unlawful conduct?

20 A. I saw it in 2003.

21 Q. And did you complain to anybody
22 about Mr. Bacon now specifically?

23 A. Mr. Bacon, yes.

24 Q. Who did you complain to?

25 A. George Hesse.

1 E. Carter

2 Q. Anybody else in 2003 now?

3 A. There were other officers
4 drinking in the station along with
5 Mr. Bacon, yes.

6 Q. I'm only concerned now about
7 Mr. Bacon.

8 A. No.

9 Q. Did you complain to anyone else
10 in 2003, other than Mr. Hesse?

11 A. No.

12 Q. Did you complain to Mr. Hesse
13 about Mr. Bacon drinking on duty in 2004?

14 A. Yes.

15 Q. How many times in 2003 did you
16 complain to Mr. Hesse about Mr. Bacon
17 drinking on duty?

18 A. Mr. Bacon would have been
19 approximately three times.

20 Q. Do you recall when in 2003?

21 A. Summer of 2003.

22 Q. Three times during the summer of
23 2003; is that correct?

24 A. That I witnessed, yes.

25 Q. And how about -- no, not that

1 E. Carter

2 you witnessed. That you complained to
3 Mr. Hesse about.

4 A. Yes.

5 Q. Three times?

6 A. (Indicating).

7 Q. So would it be -- yes?

8 A. Yes.

9 Q. So would it be fair based upon
10 your testimony -- I'm sorry, would it be a
11 fair characterization of your testimony that
12 every time that you saw Mr. Bacon drink in
13 2003 while on duty, you complained to
14 Mr. Hesse about it?

15 A. Yes.

16 Q. Okay. And the first time that
17 you complained, what did you say to
18 Mr. Hesse?

19 A. I said, "George, this is
20 bullshit. I got to clean up all your guys'
21 beers, rocket fuel, empty cups with Bacon,
22 you and the other guys drinking." And
23 George just said, "Shut up and do it."

24 Q. He said shut up and what?

25 A. Do it.

1 E. Carter

2 Q. So you weren't necessarily
3 complaining about Mr. Bacon drinking, you
4 were complaining about the fact that you had
5 to clean up his mess and other people's
6 mess, correct?

7 MR. GOODSTADT: Objection.

8 A. No. I was complaining that the
9 officers were drinking in the station and
10 leaving the mess.

11 Q. But what specifically did you say
12 to Mr. Hesse when you say you complained to
13 him that first time?

14 A. "George, this is bullshit. You
15 guys are drinking in the station and leaving
16 a mess. Beer cans, rocket fuels, cups, and
17 why do I have to clean it up?"

18 Q. Okay. So would it be fair to say
19 that part of your complaint was the fact
20 that you had to clean up the other officers
21 that you claim were drinking while on duty
22 in the station?

23 A. Part of my claim, yes.

24 Q. Okay. Part of your complaint?

25 A. Yes.

1 E. Carter

2 Q. Okay. The second time in 2003
3 that you complained, what did you say to
4 Mr. Hesse?

5 A. Basically the same thing.

6 "George, what's going on?" "You know, why
7 do I have to clean up this stuff again?"

8 Q. Okay. Third time in 2003, what
9 was the sum and substance of your complaint
10 to Mr. Hesse?

11 A. That the rocket fuels were
12 dropped at the front desk where I was.

13 Q. And that you had to clean it up?

14 A. No. That the guys were coming in
15 picking them up and I was in the middle of
16 doing stuff. Paperwork and stuff.

17 Q. So what was your complaint?

18 A. My complaint was the alcohol was
19 brought in the station. It shouldn't have
20 been there.

21 Q. Okay. So it really had nothing
22 to do with the fact that you were doing
23 paperwork at the desk?

24 A. It interfered with myself doing
25 the paperwork, yes.

1 E. Carter

2 Q. Got it. And the second time that
3 you complained to Mr. Hesse, what was
4 Mr. Hesse's response?

5 A. Again, just laughed it off and
6 walked away.

7 Q. Third time, what was Mr. Hesse's
8 response?

9 A. He gave me a look and said, "Just
10 cut the shit," and walked out.

11 Q. He said to you "cut the shit"?

12 A. Yup.

13 Q. Now was Mr. Hesse the chief of
14 police at the time in 2003, to your
15 knowledge?

16 A. No.

17 Q. Who was?

18 A. Chief Ed Paridiso.

19 Q. Did you -- when -- well, how
20 would you characterize Mr. Hesse's response
21 to your first complaint in 2003?

22 A. Normal George Hesse response.

23 Q. Well, did he --

24 MR. CONNOLLY: Objection.

25 MR. NOVIKOFF: What's that?

1 E. Carter

2 MR. CONNOLLY: Objection.

3 MR. NOVIKOFF: You objected.

4 Q. Did you -- again, what did
5 Mr. Hesse say to you when you complained to
6 him the first time in 2003?

7 A. "Cut the bullshit."

8 Q. Now would you agree with me that
9 a fair interpretation of Mr. Hesse's
10 response was that he was not going to do
11 anything about your complaint?

12 MR. GOODSTADT: Objection.

13 Q. Your first complaint?

14 MR. GOODSTADT: Objection.

15 A. Yes.

16 Q. Okay. Did you take -- did you
17 take your first complaint to Mr. Paridiso?

18 A. No.

19 Q. Did you take your complaint to
20 Mayor Rogers at the time?

21 A. No.

22 Q. Did you take -- the first time
23 that you complained to Mr. Hesse and he did
24 not give you a favorable response, did you
25 take your complaint to any trustee?

1 E. Carter

2 A. No.

3 Q. Second time in 2003, what did
4 Mr. Hesse say to you when you complained?

5 A. He said, "Just clean it up."

6 Q. Okay. Would you agree with me
7 that that wasn't a favorable response on
8 Mr. Hesse's part to your complaint?

9 MR. GOODSTADT: Objection.

10 A. Yes.

11 Q. Did you take that second
12 complaint to Mr. Paridiso?

13 A. No.

14 Q. Did you take that second
15 complaint to Mayor Rogers?

16 A. No.

17 Q. Did you take that second
18 complaint to any trustee of the village?

19 A. No.

20 Q. Third time that Mr. -- that you
21 complained to Mr. Hesse I believe you said
22 that he said "cut the bullshit," right?

23 A. Yes.

24 Q. Again, would you agree with me
25 that that was not a favorable response to

1 E. Carter

2 your complaint?

3 MR. GOODSTADT: Objection.

4 A. Yes.

5 Q. Did you take that complaint to
6 Mr. Paridiso?

7 A. No.

8 Q. Did you take that complaint to
9 Mayor Rogers?

10 A. No.

11 Q. Did you take that complaint to
12 any trustee member?

13 A. No.

14 Q. At any point in time in 2003, did
15 you complain to Ed Paridiso about the fact
16 that there were officers, to your
17 recollection, to your belief, drinking off
18 duty in the police station?

19 MR. GOODSTADT: Objection.

20 MR. NOVIKOFF: I'm sorry. I'm
21 sorry. Withdraw the question.

22 Q. At any point in time in 2003, did
23 you complain to Ed Paridiso that there were
24 officers on duty drinking?

25 A. No.

1 E. Carter

2 Q. Same question with regard to
3 Mayor Rogers?

4 A. No.

5 Q. Same question with regard to any
6 trustee at the time?

7 A. No.

8 Q. In 2003, did you communicate with
9 Ed Paridiso in any manner, shape or form
10 that there were officers drinking on duty?

11 A. No.

12 Q. Same question as to Mayor Rogers?

13 A. No.

14 Q. Same question as to the trustees?

15 A. No.

16 Q. Same question as to specifically
17 Mayor Loeffler -- I mean Mr. Loeffler?

18 A. No.

19 Q. Okay. 2004 now --

20 MR. GOODSTADT: Just so we're
21 clear, you're talking about Joe
22 Loeffler?

23 MR. NOVIKOFF: The Defendant in
24 this case, yes. And unless I otherwise
25 indicate, if I say "Mr. Loeffler," I'm

1 E. Carter

2 referring to the present mayor and the
3 person who's now a Defendant in this
4 lawsuit.

5 Q. How many times did you complain
6 to George Hesse in 2004 about officers
7 drinking while on duty?

8 A. Approximately three.

9 Q. Okay. And when was your first in
10 2004?

11 A. It was the summer of 2004 when I
12 had to leave two officers with a cell phone
13 and a police radio at CJ's Bar.

14 MO MR. NOVIKOFF: Okay. I'm going
15 to move to strike that part of the
16 answer after the time period that
17 Mr. Carter indicated in his answer.

18 Q. So you first complained in
19 2000 -- in the summer of 2004. When was
20 your second and third complaint?

21 A. Also the summer of 2004.

22 Q. Okay. Let's talk about your
23 first complaint to Mr. Hesse. What did you
24 specifically say to him?

25 A. I said, "George, I'm coming in."

1 E. Carter

2 There's no one -- there's a dock master at
3 the station." I said, "I got to walk into
4 CJ's Bar and get the radio and the cell
5 phone from Rich and Gary Bosetti, and I
6 think it's bullshit."

7 Q. And Rich and Gary Bosetti were
8 officers of Ocean Beach?

9 A. Yes.

10 Q. And when you went in on that
11 occasion to get the cell phone from them,
12 they were on duty, to the best of your
13 knowledge?

14 A. Yes.

15 Q. And what did Mr. Hesse say to
16 you, if anything, in response to your --

17 A. He -- he just looked at me and
18 walked away.

19 Q. Okay. And how long after you had
20 to get the cell phone from the Bosettis did
21 you make the complaint to George Hesse?

22 A. The next time I saw him.

23 Q. Okay. Was that the same night?
24 The next night? Next week?

25 A. It was within the week.

1 E. Carter

2 Q. Okay. And would you
3 characterize -- well, with regard to the
4 complaint about getting the cell phone from
5 the Bosettis in 2004 that you raised with
6 Mr. Hesse, did you raise this complaint with
7 Mayor Rogers?

8 A. No.

9 Q. Did you raise this complaint with
10 Ed Paridiso?

11 A. No.

12 Q. Did you raise this complaint with
13 Mr. Loeffler?

14 A. No.

15 Q. Did you raise this complaint with
16 any member of the -- any trustee?

17 A. No.

18 Q. Okay. Second time, what was your
19 complaint to Mr. Hesse about concerning
20 officers drinking on duty?

21 A. Same thing. Relieving the
22 officers in the bar.

23 Q. "Same thing" meaning you had to
24 go get the cell phone?

25 A. I had to go get the cell phone

1 E. Carter

2 and police radio from in the bar.

3 Q. And the bar was CJ's?

4 A. Yes.

5 Q. And what did Mr. Hesse say to you
6 in response to your second complaint on this
7 subject in 2004?

8 A. That he would take care of it.

9 Q. Okay. And did Mr. Hesse advise
10 you as to how he would take care of it?

11 A. No.

12 Q. Did you inquire with Mr. Hesse as
13 to how he would take care of it?

14 A. I found out the next time I
15 relieved.

16 Q. Did you inquire with Mr. Hesse
17 during the second complaint as to how he
18 would take care of it?

19 A. No.

20 Q. Okay. Did, to your knowledge --
21 withdrawn. To your knowledge, did Mr. Hesse
22 take care of it?

23 A. Yes.

24 Q. What did he do?

25 A. He then -- I then wound up

1 E. Carter

2 relieving -- walking into the station. A
3 dock master had the cell phone, the police
4 cell phone and the radio.

5 Q. So what exactly did Mr. Hesse do
6 to take care of it, to the best of your
7 recollection?

8 A. To the best of my knowledge, he
9 told them stop going out to the bars with
10 the police radio and the cell phone.

11 Q. Okay. And did the Bosettis stop
12 doing that after your second complaint in
13 2004?

14 A. Yes.

15 Q. Okay. What was your third
16 complaint concerning officers drinking on
17 duty to Mr. Hesse in 2004?

18 A. I'm sorry, officers drinking on
19 duty?

20 Q. Yes. Well, that was the only
21 thing I think you mentioned, so.

22 A. Yes. That was also the rocket
23 fuels being brought into the police station.

24 Q. Okay. And that was -- the third
25 complaint that you made to Mr. Hesse was

1 E. Carter

2 about the rocket fuels being brought into
3 the station?

4 A. Yes.

5 Q. What did Mr. Hesse say to you, if
6 anything, in response to your complaint on
7 this subject matter?

8 A. Just chuckled and ignored me.

9 Q. Okay. And did you speak with
10 Mr. Paridiso about your third complaint
11 concerning the rocket fuel?

12 A. No.

13 Q. Did you speak with mayor -- did
14 you complain to Mayor Rogers?

15 A. No.

16 Q. Did you complain to Mr. Loeffler
17 about this third complaint?

18 A. No.

19 Q. Did you complain to any trustee
20 member?

21 A. No.

22 Q. Did you communicate, in 2004,
23 with anyone, other than Mr. Hesse,
24 concerning your complaints about officers
25 drinking on duty that you've just testified

1 E. Carter

2 to?

3 A. No.

4 Q. 2005, did you complain to
5 Mr. Hesse about officers drinking on duty?

6 A. Yes.

7 Q. How many times?

8 A. One that sticks with me at this
9 time that I recall.

10 Q. And when was that?

11 A. It was Labor Day weekend.

12 Q. Labor Day, so that would have
13 been early September 2005?

14 A. Yes.

15 Q. And what did you say to
16 Mr. Hesse?

17 A. I told him down at a bar,
18 Maguire's, I said, "What's going on?" I
19 said, "I had to take off to go have one
20 drink and you guys are getting paid to have
21 a drink?" And he just looked at me and
22 said, "Shut up."

23 Q. What do you mean when you said
24 you had to take off to have one drink?

25 A. I wound up -- one of the guys was

1 E. Carter

2 going over to Iraq, Hank Clemens. We had
3 nine guys, approximately nine guys on the
4 midnight tour. I asked George if I could
5 work half a tour from 8:00 at night to 12:00
6 and go out for two beers with Hank prior to
7 him leaving, deploying for Iraq, and George
8 says, "I have plenty of coverage. Yes, you
9 could go."

10 Q. So Mr. Hesse said that you could
11 take a half a shift and celebrate with the
12 person going to Iraq, correct?

13 A. Yes.

14 Q. So what was your complaint?

15 A. Later, later in the morning,
16 approximately 3:30, 4:00 in the morning, I
17 walked down to Maguire's Bar, several of the
18 officers were inside drinking shots of
19 liquor while on duty.

20 Q. So your complaint was you had to
21 go off duty to drink, but the other people
22 were on duty and drinking?

23 MR. GOODSTADT: Objection.

24 Q. Was that your -- was that your
25 complaint to Mr. Hesse?

1 E. Carter

2 A. No. My complaint is you're
3 drinking again in uniform and why did I have
4 to take off, you know.

5 Q. Yes. That's what I'm trying to
6 understand, sir. Were you upset that you
7 had to take off in order to have a drink
8 with your -- with your friend who was going
9 to Iraq?

10 A. No.

11 Q. And the other officers could
12 drink on duty?

13 A. I wasn't upset that I had to take
14 off, no.

15 Q. Then what was the purpose of your
16 telling George Hesse that you had to take
17 off to drink and the others didn't?

18 A. It just was part of what I said
19 to him. But my complaint was they were
20 drinking while on duty.

21 Q. So that was your complaint?

22 A. Yes.

23 Q. So let me go back to this
24 incident, this night. You asked Mr. Hesse
25 to just work 8:00 to 12:00, correct?

1 E. Carter

2 A. Yes.

3 Q. So you could have a couple of
4 drinks with your -- with your friend?

5 A. Yes.

6 Q. Who was an officer?

7 A. Yes.

8 Q. And you stopped working at 12:00
9 that night?

10 A. Yes, I did.

11 Q. And then at 4:00 in the morning,
12 you saw two on duty officers drinking?

13 MR. GOODSTADT: Objection.

14 Q. Is that your testimony?

15 A. No.

16 Q. What was your testimony?

17 A. Approximately 3:00, 3:30 in the
18 morning, down at Maguire's, there were
19 several officers.

20 Q. Okay. And where did you have
21 your drink with your friend?

22 A. Down at Ocean Beach.

23 Q. And is it your testimony that you
24 had two drinks in three hours?

25 A. Yes.